REMARKS

Claim 7 has been amended herein to limit the "inorganic spherical particles" to - - non-porous, low oil absorbing spherical particles - -. Support for this amendment is found in the paragraph bridging pages 2 and 3 of Applicant's specification, particularly lines 2-3 of page 3.

Claim 7 has further been amended to recite that the silicone elastomer is present in an amount sufficient to fill fine lines or wrinkles on a skin surface. Support is found in the specification at page 7, third full paragraph. Claim 7 has been further amended to recite that the spherical particles are present in an amount to provide an optical diffusing effect on the surface of the skin. Support is found in the specification at page 7, third full paragraph. Claim 7 has also been amended to state that the combination of the crosslinked elastomer and the spherical particles in the amounts set forth in Claim 7 let the skin reflect light more evenly (page 9, third full paragraph) and feel smoother (page 7, third paragraph).

No new matter is believed added by way of this amendment.

A. Turning now to the rejection of Applicant's claims 7-13, 15-20, 22, 24, 25 and 30-35 under 35 U.S.C. 103(a) over Rouquet et al. US 6,268,345 ("Rouquet"), the Manufacturing Chemist and Anselmann:

The Examiner asserts that Rouquet describes a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical particles with a particle diameter less than 10 microns in a liquid fatty phase and employs each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20% by weight of the composition.

The Examiner recognizes that Rouquet fails to teach inorganic spherical particles and seeks to remedy this deficiency by citing the Manufacturing Chemist, which teaches Ronasphere LDF (a cosmetic filler pigment comprising sphere silica coated with titanium dioxide and iron oxide) for providing optical reduction of fine lines and making the skin appear smoother and

more natural looking. The Examiner asserts that the particle size of Ronasphere LDP pigments is less than 25 microns and the particle distribution is 4-7 microns.

The Examiner further asserts that Anselmann teaches 1-10% Ronasphere LDP can be used in a cosmetic formulation and concludes that it would be obvious to one skilled in the art to modify Rouquet's composition by incorporating spherical silica in it. The Examiner further takes the position that the skilled artisan would be motivated to do so because of the teaching of Manufacturing Chemist and Anselmann and because both Rouquet and Manufacturing Chemist teach emulsion cosmetic compositions.

Applicant respectfully submits that the Examiner's rejection of Applicant's claims over Rouquet combined with the Manufacturing Chemist and Anselmann is not well taken.

As noted earlier, Rouquet is concerned with making a stable composition containing a liquid fatty phase and high concentration of spherical particles. Rouquet solves the stability problem through use of an elastomeric organopolysiloxane and spherical organic particles.

Basically, the Examiner's position is that one skilled in the art would replace Rouquet's organic spherical particles with the spherical inorganic particles of Anselmann and The Manufacturing Chemist because they would be expected to be equivalent.

In Col. 1, lines 15 et seq., Rouquet states that it is known to use in cosmetic or dermatological compositions spherical particles, such as silica particles, to confer consistency to the compositions. Rouquet states that the silica particles have the property of absorbing fatty substances and conferring a non-greasy appearance to the compositions, even in the presence of a large amount of fatty substances. Rouquet further states that the higher the amount of the silica particles the greater the instability of the composition. Rouquet teaches that the disadvantages of these silica particle containing compositions are overcome by the use of spherical organic particles and crosslinked elastomeric organopolysiloxane. In other words, both are required.

Anselmann discloses spherical fillers, including organic types (polyamides, PMMA and nylon spheres) and inorganic types (silica, as solid or hollow spheres). Ronasphere LDP (silica spheres coated with titanium dioxide and iron oxide) is disclosed in Anselmann and in the Manufacturing Chemist.

Applicant respectfully submits that the selection by one skilled in the art of inorganic spherical particles from Anselmann's disclosure of organic spherical particles and inorganic spherical particles to replace Rouquet's organic spherical particles would be contrary to the teaching of Rouquet.

Rouquet's invention is the use of both organic spherical particles (as opposed to the prior art use of inorganic spherical particles (silica)) and crosslinked elastomeric organopolysiloxane, in order to overcome the disadvantages attributable by Rouquet to use of inorganic spherical particles (silica).

Rouquet uses spherical organic particles because they absorb oil. The use of inorganic spherical particles designed to minimize oil absorption (such as Ronasphere LDP) would be understood by one skilled in the art as being antagonistic to Rouquet's invention.

One skilled in the art would appreciate that spherical particles, such as Ronasphere LDP, would not afford the high oil absorption sought by Rouquet.

Combining Rouquet with Anselmann or Manufacturing Chemist calls for replacing Rouquet's organic spherical particles, an essential component and necessary for the success of Rouquet's invention, with silica spherical particles while ignoring Rouquet's teaching that prior art compositions containing spherical silica particles have proven to be disadvantageous.

To further distinguish Applicant's claims over the prior art, Applicant has amended Claim 7 so that the inorganic spherical particles are now limited to inorganic non-porous, low oil absorbing spherical particles.

B. Claims 7-13, 15-22, 24, 25 and 30-35 are rejected under 35 U.S.C. 103(a) as being obvious over Rouquet et al. US 6,268,345 ("Rouquet") in view of LaFleur et al. US 5,658,579 (LaFleur").

The Examiner asserts that Rouquet describes a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical particles with a particle diameter less than 10 microns in a liquid fatty phase and employs each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20% by weight of the composition.

The Examiner recognizes that Rouquet fails to teach inorganic spherical particles and seeks to remedy the deficiency by citing LaFleur. It is asserted that LaFleur teaches powder compositions comprising a combination of talcs having specified particle size distributions. The Examiner asserts that LaFleur's invention provides improved coverage, uniformity and natural look, due to the particle size distributions of the talc.

The Examiner asserts that:

- a particle size distribution of 24 microns would be obvious over a prior art teaching that a particle size distribution of 20 microns or less provides the aforementioned benefits;
- a workable particle size distribution would be obvious to one skilled in the art and discovered by routine experimentation;
- though LaFleur teaches using talcs of different size distribution, LaFleur discloses that other component can be employed, such as about 1 to about 10% fillers and powders other than talc... including... treated and untreated mica ... and silica, which suggests the equivalency of talc with mica or silica. Therefore, it would be obvious to substitute mica pigments having different particle size distribution for LaFleur's talcs having different particle size distribution.

The Examiner contends it would be obvious to modify Rouquet's composition by adding mica pigments with different size distribution, as motivated by LaFleur, because of the expectation of successfully producing a composition that provides improved coverage, uniformity and a natural look to the skin.

Applicant respectfully submits that the Examiner's rejection of Applicant's claims as being obvious over the combination of Rouquet and LaFleur is not well taken.

As the Examiner appreciates, Rouquet teaches a composition having a liquid fatty phase. In essence, Rouquet deals with a liquid fatty product. In contradistinction thereto, LaFleur teaches a powder cosmetic composition, defined in Col. 2, lines 38-40 of LaFleur, as a composition that has less than about 20% liquid content in its packaged form.

Thus, it is abundantly clear that LaFleur deals with a powder composition, whereas Rouquet deals with a liquid composition.

It is respectfully submitted that one skilled in the art would not look to LaFleur's powder composition to modify the liquid fatty based composition of Rouquet.

Moreover, LaFleur teaches the use of two talcs that differ in particle size. LaFleur theorizes that the combination of specifically sized particles promotes the coverage benefits of his invention. LaFleur speaks of course and fine particle talcs, not spherical talcs. In fact, Anselmann (cited by the Examiner) discloses that talc is platelet shaped and is not spherical. LaFleur discloses that the key is to combine talcs having particle size distributions enabling the formation of polymodal talcs which pack efficiently. This is important, because LaFleur is directed to making powders and not to making stable compositions that have a liquid fatty phase.

Rouquet is not concerned with a powder composition or the problem of having talcs pack efficiently. LaFleur's solution to the problem of packing powders more efficiently and the benefits attributable to doing so would not be considered by one skilled in the art as transferable to Rouquet.

As noted earlier, Rouquet teaches elastometric organopolysiloxane and spherical organic particles. Rouquet is concerned with making a stable composition containing a liquid fatty phase and a high concentration of spherical organic particles. Rouquet discloses that the inclusion of

an elastomeric organopolysiloxane enables one to obtain a stable composition containing a high amount of spherical organic particles.

Clearly, Rouquet and LaFleur deal with different solutions to completely different problems.

Rouquet secures certain benefits through the use of spherical organic particles in a composition that has a liquid fatty phase. Rouquet does not employ two organic spherical particles each with distinct specified particle size distributions, where efficient packing of the two is a concern.

Thus, one skilled in the art would have no reason to look to LaFleur for replacement of Rouquet's organic spherical particles with inorganic particles, more particularly two talcs (inorganic particles) having two different specified particle size distributions.

The Examiner stretches further by asserting that not only would the skilled artisan do so, he or she, would replace talc by mica. Mica is, as the Examiner has noted, included in the list of powder "other than talc". Since mica is included in a listing of materials "other than talc" it certainly can not be considered an equivalent of talc.

Clearly, the Examiner's rejection of Applicant's claims over the combination of Rouquet and LaFleur constitutes an impermissible hindsight reconstruction of Applicant's claimed invention improperly relying on Applicant's present disclosure for motivation to combine the teaching of Rouquet and LaFleur.

Favorable reconsideration of Claims 7-13, 15-20, 22, 24, 25 and 30-35 is respectfully requested.

Respectfully submitted,

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